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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

KAMRAN EHSANIPOUR,

Plaintiff and Appellant,

v.

COUNTY OF SAN MATEO  
ENVIRONMENTAL SERVICES AGENCY  
PLANNING AND BUILDING DIVISION,

Defendant and Respondent;

STEVEN SCHEFSKY et al.,

Real Parties in Interest and Respondents.

A142724

(San Mateo County  
Super. Ct. No. CIV 454974)

Kamran Ehsanipour appeals from the denial of his motion to enforce a settlement agreement against real parties in interest Steven and Eileen Schefsky. He contends, among other things, the court erred in interpreting the terms of the agreement and that there is no substantial evidence to support the court's finding that the Schefskys had complied with its terms. We shall affirm.

**Factual and Procedural History**

Following their purchase of a home in Burlingame in 2004, the Schefskys applied for and obtained permits from the County of San Mateo (county) to demolish the existing home on the property and construct a new home. In May 2006, their neighbor Ehsanipour filed suit against the county challenging issuance of the demolition and construction permits issued to the Schefskys. In November 2006, the parties entered an agreement settling the litigation. The settlement agreement, as relevant here, imposed upon the

Schefskys the obligation to promptly plant a row of ten new trees along the boundary between their property and Ehsanipour's property.<sup>1</sup> The agreement also imposed limitations on the Schefskys' ability to remove or prune existing trees on their property.<sup>2</sup> On January 4, 2007, pursuant to stipulation of the parties, the settlement agreement was entered as a judgment of the court.

On May 19, 2014, seven years after the judgment was entered resolving the prior litigation, Ehsanipour filed the motion to enforce the settlement agreement that is the subject of this appeal. In his motion, Ehsanipour asserted that the Schefskys failed to plant the new trees as required by the settlement agreement and that in 2013 the Schefskys removed numerous trees from their property without consulting a certified

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<sup>1</sup> With respect to the planting of the new trees, the settlement agreement provides: "Within twenty (20) days of the effective date of this agreement, the Schefskys will, at their sole expense, engage a landscape architect (or another individual as mutually agreed) to evaluate and map on a site plan (the "site plan") ten (10) 24-inch box trees (i.e. the containers holding the trees are commonly known by the trade as 24-inch box trees), the type to be determined by the landscape architect, to be planted at or along the common boundary between the Ehsanipour property and the Schefsky property at locations to be selected by Kamran Ehsanipour with input from the landscape architect. . . . The site plan shall be promptly submitted upon its completion to Kamran Ehsanipour for his approval to assure the proposed plantings in this area will protect the privacy of the Ehsanipour property. Kamran Ehsanipour shall provide his approval, or comments requesting any required revisions to the site plan, within five (5) days after receipt of said site plan. The planting of the trees shown on the site plan shall be completed within thirty (30) days after Kamran Ehsanipour has approved the site plan."

<sup>2</sup> With respect to existing trees, the settlement agreement requires preparation of a tree survey that has been approved by Ehsanipour. The agreement continues, "The Schefskys agree that, except as otherwise provided herein, they shall not remove any of the existing trees shown on the tree survey. Petitioners agree that the Schefskys are entitled to prune the existing trees, but only so long as such pruning is performed by a certified arborist and does not negatively [a]ffect the health of the trees or reduce the overall height of any tree by more than five (5) feet. Notwithstanding the foregoing, in the event a certified arborist determines that any tree identified in the final tree survey has died, or become diseased, due to natural causes and not the lack of maintenance and/or improper treatment, the Schefskys may trim or remove said tree(s) as deemed appropriate by a certified arborist in accordance with all applicable laws, including but not limited to the tree protection plan submitted to the county by the Schefskys in connection with the Schefsky project."

arborist as required by the settlement agreement. He argued that a new tree survey should be prepared “to accurately identify the extent of the removed and/or trimmed trees.”

In support of his motion, Ehsanipour submitted a declaration asserting that the Schefskys never “prepared a site plan or planted any of the ten 24-inch box trees” as required by the settlement agreement. Ehsanipour also stated that “On or about September 11, 2013, I saw workers on the Schefsky property cut down numerous of these trees” and that the Schefskys had not provided him “with any determination from a certified arborist regarding the condition of these trees.” Ehsanipour reported improper removal of the trees to the county. The field inspection notes in the county’s online report of the alleged violation, which Ehsanipour attached as an exhibit to his declaration, states: “Viewed site from Adeline street side and was able to see that at least two significant trees have been removed, one of which had numerous trunks starting at ground level. Significant trimming of several other trees and one tree partially removed. The sheriff stopped its removal.”

In opposition to the motion, Steven Schefsky submitted a declaration disputing Ehsanipour’s claims. Paragraph 10 of his declaration sets forth the details of his and his wife’s compliance with the settlement agreement, including meeting with Ehsanipour to conduct a tree inspection; providing a plan to Ehsanipour for the planting of the ten 24-inch box trees along the boundary of the parties’ respective properties; and, within 30 days of receiving Ehsanipour’s approval of the plan, having the box trees planted. Paragraph 13 of the declaration explained that it was understood by all parties that because “large existing Live Oak trees canopy a significant portion” of the area where the new trees were to be planted, there was a significant risk that the trees would not survive, and, in fact, several of the trees that had been planted in 2007 did not survive. Schefsky asserted that it was in light of this known risk that the settlement agreement omitted any requirement that the box trees survive. Attached to the Schefsky declaration were a number of photographs depicting the trees and conditions in the area along the boundary between the parties’ properties.

In response to the allegations regarding the 2013 tree work, Steven Schefsky's declaration explains, "In the fall of 2013, I hired a tree service because a Bay Laurel tree on the Schefsky property had just fallen. For health and safety reasons, they recommended that the tree be cut up. (They explained that when a Bay Laurel is diseased, it can then infect the surrounding live oak trees, of which we have many on our property). Given that my children and their friends play in the yard, I needed to immediately address this health and safety issue."

Prior to the hearing on the motion, the court issued a tentative decision concluding Ehsanipour had "failed to establish a breach of the settlement agreement." The court noted that the parties' declarations set forth "divergent accounts" of whether the Schefskys had complied with the provisions of the settlement agreement and that the court found Steven Schefsky's declaration more credible.

At the hearing on the motion, Eileen Schefsky, although not under oath but without objection clarified that the Schefskys had "employ[ed] a certified arborist for our property and for the trees on our property." She explained, "We are concerned about when the tree fell down, clearly we were very concerned. We've got — we have a 13-year-old daughter, a ten-year-old son now. They play quite a bit in our yard. We ha[d] a tree house built in one of our oak trees, a tree swing in another one, a rope going down from a third tree. They play extensively in our yard. When the tree fell down, we had a certified arborist figure out what was going on, why this happened. It was a bay tree, and it had infected a nearby oak. What they recommended was we take that — cut that bay laurel up, which we did. They have been out to the property again this past month, and I actually met with them at the property again yesterday. Because the problem is — what they have explained is that when they have -- when you get a bay laurel that's been infected with — it's called live oak syndrome. They have got very fancy names for it. But nonetheless, when that happens, and it can infect other trees, then you have got to remove the infecting tree. Otherwise, he said we'll have more problems. So we do have right now on the property, we also have a bay laurel that is currently infected. He is recommending that one be removed, and we are working with him on a plan to figure out exactly when

to remove that, how to get it out, those kinds of things. He said it's not in danger of falling at this point, but it will get worse. It's not going to get better on its own. It's a problem because many of the bay laurels on our property many, many years ago were planted next to oak trees. That's when it can be a problem. He recommends that we take out this bay laurel, and he said there is a few other small ones we should probably take out as well just so we don't have this problem as a pervasive problem on our property going forward."

At the conclusion of the hearing, the court remarked that "the evidence provided here this morning and argument by Ms. Evans coupled with the declaration of Mr. Schefsky sufficiently establishes that they are in compliance with all terms of the settlement agreement. They have engaged the services of a certified arborist. And perhaps Mr. Schefsky didn't use that language in his declaration when he said a tree service was enlisted, but Ms. Evans just told us that it was certified arborist. And the tentative is adopted." Thereafter, the court signed a written order adopting its tentative decision and Ehsanipour timely filed a notice of appeal.

### **Discussion**

1. *Substantial evidence supports the court's finding that the Schefskys complied with the terms of the settlement agreement.*

Ehsanipour contends there is no substantial evidence to support the trial court's finding that the Schefskys complied with the provision in the settlement agreement requiring the planting of 10 new trees. He argues that "Schefsky's self-serving declaration" is not reasonable or credible evidence. He continues, "It is implausible that if the Schefskys complied with the requirement to plant ten (10) 24-inch box trees, that there would be no documentation of such compliance, especially since according to Mr. Schefsky's own declaration, Ehsanipour's alleged hostility towards him and his family started in 2004 and continued following the execution of the settlement agreement. It would seem that the Schefskys would have a least one document to confirm their claimed compliance. The Schefskys provided no correspondence with the alleged landscape architect who mapped the trees on a site plan, no copy of the alleged site plan with the ten

(10) 24-inch box trees, no receipt for the purchase of the box trees, or a single picture of the installed box tree. In fact, Mr. Schefsky's declaration lacks any facts regarding compliance and cannot be considered substantial. Accordingly, the court erred in denying enforcement of the requirements of the settlement agreement pertaining to the planting of the box trees." The court heard this argument, however, and rejected it. The court noted that given the hostility between the parties it was not credible that Ehsanipour would wait so long to enforce this term of the agreement if the trees had not been planted. We are bound by the trial court's credibility determination in this regard. Contrary to Ehsanipour's argument, Steven Schefsky's declaration is sufficient to support the finding that the new trees were planted in conformity with the agreement.

Ehsanipour also contends there is no substantial evidence to support the trial court's finding that the Schefskys complied with the provision in the settlement agreement requiring that the pruning and removal of trees be performed by a certified arborist.<sup>3</sup> Ehsanipour argues that Eileen Schefsky's "self-serving" explanation is not sufficient to support the court's finding that the Schefskys employed a certified arborist in connection with the removal and trimming of their bay laurel tree in 2013. However, even if her statement to the court were to be disregarded because not under oath, the burden was on Ehsanipour to prove that the person who performed the work was not a certified arborist and Ehsanipour failed to do so.

Ehsanipour also argues that the Schefskys acknowledged the removal of only one tree in 2013 (the bay laurel) and the county's report establishes that multiple trees were removed or trimmed in violation of the settlement agreement. The report, however, does not establish that other trees were trimmed or removed in 2013, only that it appeared that two significant trees had been removed at some point and a third was being removed at

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<sup>3</sup> In light of the trial court's finding that the Schefskys employed a certified arborist to remove the fallen tree in 2013, we need not resolve the parties' dispute regarding whether the terms of the settlement agreement require that the actual removal of a tree (as distinguished from the recommendation to remove the tree) be performed by a certified arborist.

the time. As the moving party, it was Ehsanipour's burden to establish the violation of the agreement and his evidence was insufficient to meet that burden.

Finally, contrary to Ehsanipour's argument, the Schefskys' alleged failure to obtain a permit for the removal of the bay laurel did not establish a violation of the settlement agreement. As noted above, the settlement agreement requires that "the Schefskys may trim or remove said tree(s) as deemed appropriate by [a] certified arborist in accordance with all applicable laws, including but not limited to the Tree Protection Plan submitted to the county by the Schefskys in connection with the Schefsky Project." As Ehsanipour notes, the county's Heritage Tree Ordinance requires a permit before trimming or removal of heritage trees, of which a bay laurel of a certain size qualifies. (San Mateo County Ord. No. 2427, ch. 2, §§ 11.050, 11.051.) The same ordinance, however, provides an exemption to the permit requirement if "an emergency develops which requires immediate response for the safety of life or property." (*Id.*, § 11.053.) Given Steven Schefsky's explanation that the tree was removed after it fell and to secure the safety of the property, the failure to obtain a permit does not establish a violation of the agreement.

2. *Ehsanipour was not entitled to a new tree survey.*

The settlement agreement provides the following remedy for the alleged improper removal of trees: "In the event petitioners, or any one of them, claim that any tree(s) on the tree survey require removal as a result of a lack of maintenance and/or improper treatment, and/or pruned in a manner that fatally damages the tree(s) based upon a certified arborist's report, then that petitioner shall so notify the Schefskys and, if the Schefskys obtain the opinion of a certified arborist that disagrees with the conclusion as to the cause of death of said tree(s), the involved parties shall submit the issue to a third certified arborist . . . for a final determination. In the event the third certified arborist determines that the petitioner's arborist was correct, the third certified arborist shall determine the appropriate size and type of replacement tree(s) to be purchased and planted at the Schefskys' sole expense."

Ehsanipour acknowledges that the agreement “does not explicitly require the Schefskys to provide Ehsanipour a determination from a certified arborist regarding the condition of the trees or mention that Ehsanipour may access the Schefskys’ property to survey what tree has been removed.” He argues, however, that “[i]t is implied and necessary from the terms of the settlement agreement/judgment that Ehsanipour would be entitled to 1) conduct a survey of the current conditions of the trees to determine and compare it to the original tree survey to determine what trees have been removed and/or trimmed to what height since the Schefskys are prohibited from pruning the trees that would ‘negatively [a]ffect the health of the trees or reduce the overall height of any tree by more than five (5) feet’ and 2) examination and determination from a certified arborist regarding the reasons for the Schefskys’ removal of the trees, since the Schefskys may only remove or trim trees that are dead ‘or become diseased, due to natural causes and not the lack of maintenance and/or improper treatment.’ ” He contends the court erred in denying his request for preparation of a new tree survey and asserts that “[b]y not allowing Ehsanipour access to determine what tree was removed or the trees trimmed on the Schefskys’ property, the lower court essentially rendered the remedy, and effectually all the tree removal and/or pruning restrictions, stated in the settlement agreement/judgment meaningless.” We disagree.

The settlement agreement does not provide for preparation of a new tree survey to enable Ehsanipour to monitor the Schefskys’ compliance with the agreement. Contrary to Ehsanipour’s suggestion, such a provision would be at odds with the restrictions that are in the agreement. As noted, absent an emergency, the Schefskys are required by county ordinance to obtain a permit before trimming or removing heritage trees. This public process is sufficient to apprise Ehsanipour of impending trimming or removal of trees on the Schefskys’ property and provides sufficient information from which he, or an arborist he employs, can determine if the Schefskys are violating the settlement agreement.<sup>4</sup> If it

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<sup>4</sup> The county’s ordinance requires a party seeking a permit to include in their application the species, size and location of the tree involved as well as a brief statement of the



is determined that the Schefskys have violated the agreement, a new tree survey might be appropriate to determine the scope of relief. Here, however, the court found that the Schefskys were in compliance with the agreement. As the court noted, “[Y]ou’re asking me to enforce the settlement agreement. I don’t think there is anything for the court to enforce that the Schefskys haven’t sufficiently complied with.” Accordingly, there is no basis on which to order a new tree survey.

### **Disposition**

The order denying appellant’s motion to enforce settlement is affirmed.  
Respondents shall recover their costs on appeal.

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Pollak, Acting P.J.

We concur:

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Siggins, J.

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Jenkins, J.

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reason for the requested action and any other pertinent information the county may require. (San Mateo County Ord. No. 2427, ch. 2, § 11.052.)